IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

Nos. 73-1440, 73-1441, 73-1442

MCBRYDE SUGAR COMPANY, LIMITED, and
OLOKELE SUGAR COMPANY, LIMITED, *Appellants,*

vs.

STATE OF HAWAII, et al., *Appellees.*

SELWYN A. ROBINSON, et al., *Petitioners,*

vs.

STATE OF HAWAII, et al., *Respondents.*

IDA ALBARADO, et al., *Petitioners,*

vs.

STATE OF HAWAII, et al., *Respondents.*

On Appeal from the Supreme Court of the State of Hawaii and Petitions for Writ of Certiorari to the Supreme Court of the State of Hawaii

OBJECTION OF THE STATE OF HAWAII TO MOTION OF HAWAIIAN SUGAR PLANTERS' ASSOCIATION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The State of Hawaii hereby objects to the motion of Hawaiian Sugar Planters' Association for leave to file brief amicus curiae, which was served on April 1, 1974:

a. Movant, Hawaiian Sugar Planters' Association, is an unincorporated association whose members include all sugar plantations engaged in sugar production in Hawaii, of which association the parties to this action are members, thus, the interests of petitioner are the same as those of the parties to this action.

The motion of movant, Hawaiian Sugar Planters' Association does violence to the law of *amicus curiae*. In *Re Ohlhauser's Estate,* 101 N.W.2d 827, 829 (1960), the court stated:

> "We find the term 'amicus curiae' literally means 'a friend of the court'. It ordinarily implies the friendly intervention of counsel to call the court's attention to a legal matter which has escaped or might escape the court's consideration. The right to be so heard is entirely within the court's discretion. It is a privilege and not a right. An amicus curiae, in fact, has no legal standing in court. *He cannot be partisan. . . .*" (Emphasis added).

A pertinent part of the motion of movant reads:

> "Hawaiian Sugar Planters' Association is an unincorporated association whose members include all sugar plantations engaged in sugar production in Hawaii. The continued successful operation of most of those plantations is directly dependent upon their right to continued use of water sources and irrigation facilities developed and relied upon, as the key to successful agricultural enterprises during the past one hundred years."[1]

Movant seeks to appear in the case as a party and a partisan aligned with the appellants and petitioners and not as a friend of the court. Movant is too

[1] "Motion for Leave to File Brief Amicus Curiae of Hawaiian Sugar Planters' Association" p. 2.

partisan to be anything other than an intervenor. Thus, said motion is without merit.

b. All facts and questions relative to the interest of the sugar plantations should be adequately presented to the Court by the parties.

Far from affording assistance to this court on the decisive issues, the brief amicus curiae, instead, merely emphasizes the importance of the sugar industry. Thus, the brief amicus curiae appears of little judicially cognizable import and to an extent is repetitious of that of the parties.

c. The opinion of the Supreme Court of the State of Hawaii relating to the ownership and transportability of water in Hawaii does not have such a far-reaching adverse effect upon the sugar industry.

d. Petitioner did not participate in the proceedings before the Supreme Court of the State of Hawaii as amicus curiae.

CONCLUSION

For the foregoing reasons we respectfully submit that the motion of Hawaiian Sugar Planters' Association for leave to file a brief amicus curiae be denied.

Dated, Honolulu, Hawaii,
May 23, 1974.

Respectfully submitted,

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Attorney General, State of Hawaii,

By JOHNSON H. WONG,
Deputy Attorney General,

Attorneys for Appellee-Respondent State of Hawaii.